

Appendix B

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PURSUANT TO COURT ORDER

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

ASTRAZENECA AB, AKTIEBOLAGET
4 HASSLE, ASTRAZENECA LP, KBI INC.
and KBI-E INC.,

5
6 Plaintiffs,

7 vs.

Civil Action No.
01-CIV-9351(BSJ)

8 APOTEX CORP., APOTEX, INC.
and TORPHARM, INC.,

Defendants.

9 -----x Civil Action No.
IN RE OMEPRAZOLE PATENT LITIGATION M-21-81(BSJ)

10 -----x MDL Docket No. 1291

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12 *PURSUANT TO COURT ORDER*

13
14 August 14, 2013

15 8:52 a.m.

16
17 Videotaped deposition of ROY
18 WEINSTEIN, held at the offices of Sidley
19 Austin LLP, 787 Seventh Avenue, New York,
20 New York, pursuant to notice before Cary N.
21 Bigelow, Court Reporter, a Notary Public of
22 the State of New York.

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1	Q. And this chart records a 4 percent	09:45:52	1	of Prilosec OTC from his cost comparison	09:49:23
2	decrease in Nexium extended unit volume; is that	09:45:56	2	analysis; is that right?	09:49:27
3	right?	09:46:01	3	A. Yes.	09:49:28
4	A. Correct.	09:46:01	4	Q. Now, Dr. Rausser's analysis was of the	09:49:30
5	Q. And that's a decrease in volume from	09:46:05	5	relative prices of Nexium and omeprazole and it	09:49:33
6	the trend line that was identified by the author;	09:46:08	6	began with the prices recorded in pharmacy logs;	09:49:37
7	is that right?	09:46:12	7	is that correct?	09:49:41
8	A. Yes, sir.	09:46:13	8	A. That's fair.	09:49:42
9	Q. But looking at the actual data points	09:46:14	9	Q. And he looked at the prices paid by	09:49:43
10	of extended unit volume, the extended unit volume	09:46:19	10	certain third-party payers for Nexium and	09:49:46
11	for Nexium continues to increase over the entire	09:46:22	11	omeprazole as reflected in those logs between	09:49:49
12	period of time; is that right?	09:46:27	12	December of '02 and November of '03; is that	09:49:53
13	A. Well, it's not a continuous increase,	09:46:29	13	right?	09:49:58
14	that is some months represent a decrease from the	09:46:35	14	A. That's my recollection, yes, sir, for	09:49:59
15	prior month.	09:46:38	15	two specific geographic areas.	09:50:00
16	That said, on average there does appear	09:46:39	16	Q. Right.	09:50:03
17	to be an increase in the number of extended units	09:46:50	17	And did you analyze those pharmacy logs?	09:50:03
18	over time, although that pattern is below the	09:46:54	18	A. I didn't go back to the original logs,	09:50:11
19	trend line that one obtains based on the	09:47:04	19	if I understand your question accurately, I	09:50:18
20	experience prior to September 2003.	09:47:08	20	relied on Dr. Rausser's description of what he	09:50:21
21	Q. And so in about September of 2003 the	09:47:12	21	did in his expert report rather than go back to	09:50:24
22	first data point thereafter is at about 75	09:47:16	22	the original pharmacy logs.	09:50:30
23	million extended units; is that right?	09:47:22	23	Q. So you don't know whether there are	09:50:36
24	A. That's fair.	09:47:24	24	instances in the pharmacy logs where a third-	09:50:39
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1	Q. And then the last data point just after	09:47:25	1	party payer was paying for all or a portion of	09:50:44
2	November of '04, it looks like that's at about 90	09:47:30	2	Prilosec OTC between the time period of	09:50:48
3	million extended units; is that correct?	09:47:33	3	Dr. Rausser's analysis December 2002 to November	09:50:53
4	A. That's also correct.	09:47:35	4	of 2003; is that right?	09:51:00
5	Q. And when this chart identifies the 4	09:47:38	5	A. No, that's not right.	09:51:01
6	percent drop it indicates that that is occurring	09:47:44	6	Q. You do know that?	09:51:03
7	as of September of 2004; is that right?	09:47:50	7	A. I think so because, if I understand	09:51:04
8	A. I don't read it exactly that way. I	09:48:06	8	your question correctly, Dr. Rausser did a	09:51:07
9	read the 4 percent drop as being the cumulative	09:48:08	9	supplemental report or an additional report in	09:51:09
10	impact post-September 2003 relative to the trim	09:48:11	10	which he described this subject matter, and I	09:51:12
11	line.	09:48:18	11	believe in that report he indicated that he did	09:51:19
12	Q. Accounting for the entire time period	09:48:19	12	go back and look at the pharmacy logs either	09:51:22
13	through November 2004; is that right?	09:48:22	13	again or had done so originally with respect to	09:51:26
14	A. That's right.	09:48:24	14	Prilosec OTC during the period prior to the	09:51:32
15	Q. And if you just, for example, looked at	09:48:25	15	hypothetical negotiation as well as subsequent	09:51:39
16	the period up through November 2003, the date of	09:48:26	16	thereto.	09:51:41
17	the hypothetical negotiation, would you agree	09:48:31	17	Q. And he determined that there were no	09:51:42
18	that you wouldn't see that 4 percent impact?	09:48:36	18	instances where the third-party payers in his	09:51:45
19	A. With respect to this analysis, that's	09:48:44	19	study paid for the Prilosec OTC; is that right?	09:51:51
20	true, you don't have enough time there.	09:48:49	20	A. That's not right.	09:51:55
21	Q. If I could have you take a look back at	09:48:53	21	It's right with respect to the period	09:51:56
22	your report, please, which is Exhibit I, and in	09:48:54	22	prior to the hypothetical negotiation, which was	09:51:58
23	particular paragraph 20, in subpoint A you say	09:49:04	23	roughly a month and a half; it's not right,	09:52:00
24	that Dr. Rausser excludes transactions for sales	09:49:19	24	according to Dr. Rausser, for the period	09:52:05

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1	that were in this category. 09:57:26	1	A. My general understanding. 10:00:44
2	Q. You know something about copays for 09:57:29	2	Q. Can you describe for me an instance 10:00:48
3	prescription drugs; correct? 09:57:32	3	where a third-party payer pays the WAC price for 10:00:50
4	A. Yes. 09:57:34	4	a prescription drug? 10:00:54
5	Q. Do you think it would be typical for a 09:57:35	5	A. I can't. 10:00:56
6	health plan at this time in 2003 to have copays 09:57:42	6	Q. Other than the comparisons you've seen 10:00:57
7	higher than \$20 for all of the PPIs? 09:57:48	7	done by Dr. Rausser, do you have any other basis 10:01:01
8	A. I don't know. 09:57:52	8	for your statement that Prilosec OTC at 71 cents 10:01:05
9	Q. You mentioned that at 71 cents per pill 09:57:56	9	per pill was the lowest price in the PPI market 10:01:10
10	that Prilosec OTC would have been the cheapest 09:58:01	10	by a wide margin? 10:01:13
11	PPI for pharmacies; is that right? 09:58:04	11	A. I don't. 10:01:14
12	A. I did. 09:58:07	12	Q. Do pharmacies pay the WAC price for 10:01:21
13	Q. Why does that matter? 09:58:08	13	prescription drugs? 10:01:24
14	A. Well, it matters because price matters 09:58:14	14	A. No. 10:01:26
15	in this industry, as is true for most industries; 09:58:17	15	Q. Do wholesalers pay the WAC price for 10:01:27
16	other things equal, the lower the price the 09:58:23	16	prescription drugs? 10:01:29
17	greater the sales. 09:58:27	17	A. As far as I know, they do. 10:01:31
18	Q. Does AstraZeneca sell Nexium to 09:58:28	18	Q. They don't get any discounts off the 10:01:36
19	pharmacies? 09:58:33	19	WAC price? 10:01:39
20	A. No. As far as I know, it sells to 09:58:34	20	A. They might. 10:01:40
21	wholesalers. 09:58:38	21	Q. You also say in that sentence we've 10:01:52
22	Q. So does AstraZeneca care what the 09:58:41	22	been looking at that Prilosec OTC's price is 10:01:54
23	relative price is of its -- of Nexium, for 09:58:47	23	specifically designed to capture market share 10:01:58
24	example, to other PPIs are to pharmacies? 09:58:52	24	that otherwise would have been ceded to the 10:02:00
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1	A. Well, not directly, it doesn't. It 09:59:01	1	generics. 10:02:05
2	cares about the relative prices to wholesalers. 09:59:03	2	What's your basis for that statement? 10:02:05
3	Q. And why does it care about that? 09:59:10	3	A. The work I have done on this case. 10:02:07
4	A. Because other things equal, the lower 09:59:12	4	Q. Any other basis? 10:02:15
5	the price, the greater the sales. 09:59:15	5	A. Well, to expand on that previous 10:02:19
6	Q. And what is your basis for saying that 09:59:27	6	answer, AstraZeneca chose to release an 10:02:28
7	71 cents per pill was the lowest price in the PPI 09:59:29	7	over-the-counter formulation with the same name 10:02:35
8	market by a wide margin? 09:59:32	8	as Prilosec, which means there was an effort to 10:02:38
9	A. I've seen comparisons done by 09:59:35	9	build on the brand equity in Prilosec that had 10:02:43
10	Dr. Rausser, bar charts, a bar chart where he has 09:59:38	10	been achieved, the price at which Prilosec OTC 10:02:47
11	prices of various products, including Prilosec 09:59:46	11	was made available was well under the price of 10:02:58
12	OTC, Nexium, Prilosec and the others. 09:59:55	12	other products in the market at the time; I view 10:03:02
13	Q. And those are WAC prices? 09:59:58	13	that as an effort to build on the Prilosec brand 10:03:08
14	A. I believe so. 10:00:02	14	equity at the expense of the generics, among 10:03:11
15	Q. Do uninsured consumers pay the WAC 10:00:09	15	other things. 10:03:17
16	price for drugs? 10:00:11	16	Q. Are you aware of any AstraZeneca 10:03:21
17	A. Not as far as I know. 10:00:14	17	documents that state that Prilosec OTC's price 10:03:25
18	Q. Do insured consumers pay the WAC price 10:00:17	18	was specifically designed to capture market share 10:03:29
19	for prescription drugs? 10:00:20	19	that otherwise would have been ceded to the 10:03:32
20	A. Not as far as I know. 10:00:22	20	generics? 10:03:34
21	Q. Do third-party payers pay the WAC price 10:00:24	21	A. Not as I sit here. 10:03:34
22	for prescription drugs? 10:00:28	22	Q. Are you aware of any testimony from 10:03:36
23	A. They might. 10:00:40	23	AstraZeneca witnesses that support the 10:03:39
24	Q. What's your basis for saying that? 10:00:41	24	proposition that Prilosec OTC's price was 10:03:43

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1	Q. The heading of the chart is comparison	10:23:13	1	whether the results Dr. Rausser identified would	10:26:20
2	of PPIs post OTC; is that right?	10:23:14	2	have been materially different in other states?	10:26:27
3	A. It is.	10:23:22	3	A. I have not.	10:26:30
4	Q. And August would have been the last	10:23:23	4	Q. Why not?	10:26:32
5	full month before the launch of Prilosec OTC;	10:23:24	5	A. That really wasn't my assignment.	10:26:35
6	correct?	10:23:27	6	Q. If you can look at paragraph 23 for me	10:26:43
7	A. That's fair.	10:23:28	7	of your report, in the third sentence you say	10:26:49
8	Q. So would you agree, then, that on an	10:23:29	8	"Dr. Rausser has not provided details regarding	10:26:54
9	absolute basis, understanding again your trend	10:23:32	9	the characteristics of his sample."	10:26:56
10	line point, that new prescriptions for Nexium	10:23:35	10	What details do you contend Dr. Rausser	10:26:59
11	increased in the period between the launch of	10:23:39	11	hasn't provided?	10:27:03
12	Prilosec OTC and November 2003?	10:23:42	12	A. Well, since he's making inferences	10:27:09
13	A. I'm fine with that.	10:23:54	13	about pricing throughout the United States the	10:27:11
14	Q. If I could have you take a look back at	10:23:56	14	details would have included information about the	10:27:16
15	your report, which is the one that's been marked	10:23:58	15	representative nature of his sample relative to	10:27:24
16	as Exhibit 1, and in particular paragraph 22, and	10:24:00	16	the United States as a whole; as far as I know,	10:27:29
17	in the last sentence you say that the pharmacy	10:24:12	17	he has not provided that information.	10:27:33
18	log data Dr. Rausser relied upon were specific to	10:24:16	18	Q. Any other details that you contend he	10:27:36
19	California and Massachusetts and therefore not	10:24:20	19	hasn't provided?	10:27:41
20	representative of the United States as a whole.	10:24:23	20	A. No.	10:27:42
21	Do you see that?	10:24:25	21	Q. In the next sentence you say "It is	10:27:47
22	A. I do.	10:24:26	22	inappropriate to make inferences about the	10:27:51
23	Q. And what's your basis for that	10:24:27	23	relative price of Nexium and omeprazole in the	10:27:52
24	statement?	10:24:28	24	United States based on a sample that has not been	10:27:57
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1	A. He's relying only on data from two	10:24:31	1	shown to be large enough or representative of the	10:27:59
2	states and making inferences about behavior	10:24:35	2	population it purports to represent."	10:28:01
3	throughout all 50 states, he hadn't made a	10:24:40	3	Is your basis for that sentence as you	10:28:06
4	showing that it's proper to make such inferences.	10:24:47	4	just described?	10:28:08
5	Q. Any other basis for that statement?	10:24:56	5	A. Yes, sir.	10:28:09
6	A. Yes.	10:24:59	6	Q. In your opinion how large would the	10:28:15
7	I think I address this further on in my	10:25:05	7	sample have to be in order for one to draw	10:28:17
8	report, but Dr. Rausser himself identifies a	10:25:09	8	inferences about the relative prices of Nexium	10:28:20
9	number of issues that he had with the data that	10:25:16	9	and omeprazole in the United States?	10:28:23
10	he relied on. The impact of those issues was to	10:25:18	10	A. I can't say, I don't know, but I don't	10:28:26
11	further reduce the database of usable information	10:25:26	11	believe he's provided information on that	10:28:31
12	for him.	10:25:34	12	question.	10:28:33
13	What that ultimately means is that his	10:25:38	13	Q. And you haven't done any analysis to	10:28:35
14	sample is even narrower than what began as a	10:25:43	14	determine what the sample size should be?	10:28:37
15	sample of data for California and Massachusetts	10:25:49	15	A. That's correct.	10:28:39
16	for a particular time period and from that very	10:25:53	16	Q. So is it the case that you are not	10:28:41
17	narrow sample he's making inferences about the	10:25:58	17	saying the sample size is necessarily too small	10:28:57
18	United States as a whole, which I don't believe	10:26:01	18	but that Dr. Rausser hasn't explained why it's	10:28:59
19	he can justifiably make.	10:26:05	19	large enough?	10:29:04
20	Q. And is there any other basis for your	10:26:09	20	A. Well, that's true, but it's also	10:29:05
21	statement that the data he relied on was not	10:26:11	21	correct that he himself notes that his sample is	10:29:09
22	representative of the United States as a whole?	10:26:14	22	not representative of behaviors throughout the	10:29:17
23	A. No.	10:26:16	23	United States.	10:29:22
24	Q. Have you done any analysis to determine	10:26:17	24	Q. If I could have you take a look at	10:29:32

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1	paragraph 25 for me, please, which is on page 12 10:29:34	1	Q. And 2003 is the year of the 10:33:10
2	of your report, in the second sentence you say 10:29:39	2	hypothetical negotiation between AstraZeneca and 10:33:11
3	"Mail order accounts for a significant portion of 10:29:48	3	Apotex; correct? 10:33:13
4	the market and an analysis that does not consider 10:29:51	4	A. Correct. 10:33:14
5	this segment is incomplete." 10:29:56	5	Q. And on what do you base your opinion 10:33:16
6	What's the market you're talking about 10:30:00	6	that a channel representing 13 percent of 10:33:20
7	in that sentence? 10:30:03	7	prescription drugs sales is significant? 10:33:23
8	A. Well, actually both the PPI market and 10:30:04	8	A. 13 percent is a significant number. 10:33:26
9	generally with respect to prescription 10:30:08	9	Q. And is there, in your opinion, a 10:33:30
10	pharmaceuticals. 10:30:11	10	threshold percentage for significance? 10:33:33
11	Q. And what's your basis for asserting 10:30:21	11	A. No, it depends on the nature of the 10:33:35
12	that mail order accounts for a significant 10:30:23	12	investigation, but in this context 13 percent is 10:33:43
13	portion of the PPI market? 10:30:25	13	significant. 10:33:46
14	A. Footnote 28 references mail order 10:30:38	14	Q. Would 10 percent be significant? 10:33:49
15	generally, it's not specific to PPIs. 10:30:48	15	A. In this context, yes. 10:33:51
16	As I sit here, I'm not certain what I 10:30:56	16	Q. Nine? 10:33:55
17	have seen with respect to the PPI market in mail 10:30:59	17	A. Probably would still be significant. 10:33:55
18	order. I do believe I saw some documents from 10:31:02	18	Q. Eight? 10:33:57
19	Dr. Rausser's workpapers that referenced that. 10:31:05	19	A. I don't think I'd want to go beyond 10:34:01
20	Q. But as you sit here today you can't 10:31:11	20	nine or 10, but it's clear that mail order was 10:34:04
21	point to a specific document that shows, that 10:31:14	21	significant back in 2003 and it's become even 10:34:12
22	demonstrates the significance of mail order for 10:31:18	22	more significant over time. 10:34:16
23	the PPI market? 10:31:20	23	Q. But you wouldn't want to go any lower 10:34:21
24	A. I suppose we'd need to check the 10:31:34	24	than nine or 10 percent for the significance 10:34:23
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1	deposition testimony of Kenneth Graham which is 10:31:38	1	threshold; is that right? 10:34:26
2	referenced in the subsequent two sentences. 10:31:41	2	A. In this context I'd probably stop 10:34:28
3	Q. Other than potentially the Graham 10:31:48	3	there. 10:34:39
4	testimony and perhaps workpapers that Dr. Rausser 10:31:50	4	(Weinstein Exhibit 8, two-page article 10:34:59
5	cited, do you have any other basis for the 10:31:55	5	entitled "How Mail-Order Pharmacy Gained in 10:35:30
6	assertion that mail order accounts for a 10:31:59	6	Market Share in 2003," marked for 10:35:35
7	significant portion of the PPI market? 10:32:01	7	identification, as of this date.) 10:35:20
8	A. No. 10:32:04	8	Q. Mr. Weinstein, the document that's been 10:35:20
9	Q. Now, for the prescription drug market 10:32:06	9	marked as Exhibit 8 before you is an article 10:35:25
10	generally, what's your basis for the statement 10:32:09	10	entitled "How Mail-Order Pharmacy Gained in 10:35:30
11	that mail order accounts for a significant 10:32:11	11	Market Share in 2003." 10:35:35
12	portion of it? 10:32:13	12	Is this the article that you cite in 10:35:46
13	A. Footnote 28 as well as my general 10:32:14	13	footnote 28 of your report? 10:35:48
14	understanding of the prescription drug market. 10:32:20	14	A. Yes. 10:35:50
15	Q. And what's your basis for the statement 10:32:27	15	Q. And the article is dated March 22, 10:36:02
16	that an analysis that does not consider this 10:32:31	16	2004; is that right? 10:36:05
17	segment being the mail order segment is 10:32:35	17	A. Correct. 10:36:06
18	incomplete? 10:32:37	18	Q. And that's after the date of the 10:36:06
19	A. I believe that sentence to be correct. 10:32:39	19	hypothetical negotiation; is that right? 10:36:08
20	According to footnote 28, in 2003 mail order 10:32:47	20	A. Also correct. 10:36:10
21	pharmacies accounted for 13 percent of 10:32:50	21	Q. In the fourth paragraph is where it 10:36:15
22	prescription drug sales, that's a significant 10:32:53	22	says that mail order represented 13.2 percent of 10:36:20
23	portion of the market that one would not want to 10:32:55	23	prescription drug sales in 2003; is that right? 10:36:25
24	ignore. 10:32:59	24	A. Correct. 10:36:29

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1	Q. If you look at the first paragraph of	10:36:31	1	A. No.	10:40:12
2	this article it notes that that figure was up 15	10:36:41	2	Q. In that sentence what payers are you	10:40:23
3	percent from the previous year; is that right?	10:36:44	3	talking about?	10:40:27
4	A. Correct.	10:36:46	4	A. Third-party payers.	10:40:34
5	Q. So mail order sales were lower than 13	10:36:47	5	Q. All third-party payers?	10:40:38
6	percent in 2002; is that right?	10:36:50	6	A. In that context, yes.	10:40:42
7	A. I think that statement is probably true	10:36:54	7	Q. So Nexium was at a disadvantage among	10:40:44
8	although it doesn't necessarily follow directly	10:37:10	8	all third-party payers because AstraZeneca chose	10:40:48
9	from what you've asked me to look at, but I think	10:37:12	9	not to compete on price?	10:40:52
10	the statement is probably true nonetheless.	10:37:15	10	A. Other things being equal, that's true.	10:40:53
11	Q. If you could look at the second	10:37:26	11	Q. If you could look at the next sentence,	10:41:21
12	paragraph, the first sentence there indicates	10:37:28	12	"By excluding this segment of the market from his	10:41:24
13	that in 2003 retail sales comprised a little	10:37:29	13	analysis Dr. Rausser's results paint an	10:41:27
14	under 60 percent of prescription drug sales; is	10:37:35	14	incomplete picture of the PPI market," what's	10:41:29
15	that right?	10:37:39	15	your basis for that statement?	10:41:34
16	A. Correct.	10:37:51	16	A. I think we went over that previously.	10:41:35
17	Q. And Dr. Rausser's analysis was based on	10:37:52	17	Q. That mail order is, in your view, a	10:41:38
18	retail sales; is that right?	10:37:54	18	significant portion of the market?	10:41:41
19	A. Yes.	10:37:56	19	A. Yes.	10:41:42
20	Q. If I could have you take a look back at	10:38:05	20	Q. Is it your opinion that Dr. Rausser	10:41:54
21	the document that we marked as Exhibit 7 --	10:38:07	21	needed to include every channel for drug sales in	10:41:55
22	actually, let's skip that.	10:38:22	22	his analysis?	10:41:57
23	Let's look back at your report, Exhibit	10:38:24	23	A. I think he should have looked more	10:42:03
24	1, paragraph 25, in the third sentence you say	10:38:30	24	closely at mail order.	10:42:06
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1	that the mail order business is significant in	10:38:40	1	Q. Are there any other channels that you	10:42:14
2	this case because mail order businesses can be	10:38:42	2	contend he should have included in his analysis?	10:42:19
3	highly cost sensitive and can exercise a high	10:38:45	3	A. Not necessarily, but as can be seen	10:42:24
4	level of control over their formulary status.	10:38:48	4	from my report, I thought that his sample size,	10:42:32
5	What's your basis for that statement?	10:38:57	5	the data he actually used was too thin to make	10:42:39
6	A. The deposition of Kenneth Graham.	10:38:59	6	inferences about pricing throughout the United	10:42:43
7	Q. Anything else?	10:39:02	7	States as a whole.	10:42:45
8	A. The sentence is consistent with my	10:39:10	8	Q. But in terms of channels beyond mail	10:42:46
9	general understanding.	10:39:15	9	order, there are not others that you contend	10:42:50
10	Q. Anything else?	10:39:21	10	Dr. Rausser should have included in his analysis;	10:42:53
11	A. No.	10:39:22	11	is that right?	10:42:56
12	Q. The next sentence says Nexium was at a	10:39:24	12	A. That's fair.	10:42:56
13	disadvantage among such payers because	10:39:27	13	Q. In the next sentence you state that if	10:43:00
14	AstraZeneca generally chose not to compete on	10:39:31	14	the mail order segment of the market had been	10:43:02
15	price.	10:39:35	15	included in his analysis the cost of generic	10:43:05
16	What's your basis for that statement?	10:39:35	16	omeprazole therapy would have been found to be	10:43:08
17	A. It's -- the deposition of Kenneth	10:39:39	17	lower than Dr. Rausser finds it to be.	10:43:10
18	Graham. The basis also includes other	10:39:46	18	What's your basis for that statement?	10:43:14
19	AstraZeneca documents I've seen about Nexium	10:39:53	19	A. The basis for that statement is that	10:43:17
20	where the strategy described was to maintain what	10:39:53	20	mail order is a very price-competitive segment of	10:43:19
21	was referred to as the price integrity of Nexium,	10:40:00	21	the market, so given that the strategy that	10:43:25
22	in other words, to hold the price up to the	10:40:04	22	AstraZeneca had embarked upon was to maintain the	10:43:33
23	extent possible.	10:40:06	23	price integrity of Nexium including mail order	10:43:37
24	Q. Any other basis?	10:40:11	24	would have, at a minimum, narrowed the gap	10:43:43

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1	of those rebates is one method of competing on	10:49:10	1	case that third-party payers who purchased the	10:52:09
2	price?	10:49:15	2	most Nexium were able to negotiate the lowest	10:52:13
3	A. Correct.	10:49:15	3	price for Nexium."	10:52:17
4	Q. So it's not the case that AstraZeneca	10:49:18	4	Do you see that?	10:52:19
5	was never willing to compete on price with	10:49:22	5	A. I do.	10:52:20
6	respect to Nexium; is that right?	10:49:24	6	Q. And you're talking about there rebate	10:52:21
7	A. That's correct.	10:49:27	7	agreements that AstraZeneca would have with	10:52:23
8	Q. If I could have you take a look at	10:49:30	8	payers concerning Nexium; is that right?	10:52:25
9	paragraph 26 of your declaration, please, you	10:49:32	9	A. Yes, sir.	10:52:27
10	begin that sentence by referring to inherent	10:49:39	10	Q. And would you agree that it would be	10:52:28
11	limitations.	10:49:43	11	reasonable for AstraZeneca to be most concerned	10:52:30
12	What do you mean by inherent	10:49:44	12	with payers that had the most Nexium sales and	10:52:34
13	limitations?	10:49:46	13	payers with whom it had existing rebate	10:52:41
14	A. Those are the -- in that context those	10:49:46	14	agreements?	10:52:44
15	are the limitations that Dr. Rausser described	10:49:49	15	A. Most concerned in what sense?	10:52:48
16	with respect to this data.	10:49:51	16	Q. Most concerned in the sense of worry	10:52:51
17	Q. That's the limitations of the pharmacy	10:49:57	17	that actions in the market would negatively	10:52:54
18	log data that Dr. Rausser described; is that	10:50:00	18	impact relationships with payers.	10:52:58
19	right?	10:50:02	19	A. Thank you.	10:53:04
20	A. Yes.	10:50:02	20	Yes, I would agree with that.	10:53:05
21	Q. If I could have you take a look at	10:50:08	21	Q. If you could look at paragraph 34 for	10:53:11
22	paragraph 31, please, which is on page 15, you	10:50:10	22	me, please, it says "Thus, by the time	10:53:13
23	refer to Dr. Rausser trimming his sample to 20	10:50:17	23	Dr. Rausser performed his analysis the 30	10:53:19
24	payers that purchased the most Nexium, and then	10:50:21	24	pharmacy locations in the original sample had	10:53:23
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1	you say this modification alters the	10:50:24	1	been reduced to nine unique third-party payers in	10:53:25
2	characteristics of the sample and further calls	10:50:27	2	California and Massachusetts."	10:53:29
3	into question its use in making inferences about	10:50:28	3	What's your basis for that statement?	10:53:34
4	pricing across the United States as a whole.	10:50:31	4	A. Well, in trying to understand what	10:53:36
5	What is the point you are getting at	10:50:34	5	Dr. Rausser had done in working with his pharmacy	10:53:42
6	with that comment?	10:50:36	6	logs, that seemed to me to be where he wound up;	10:53:45
7	A. I had hoped it was self-explanatory.	10:50:44	7	that is, he started with 30 and based on my	10:53:54
8	Q. I'm a little slow.	10:50:52	8	review it appeared that he wound up with nine	10:53:57
9	A. I don't think so.	10:50:54	9	unique third-party payers.	10:54:02
10	The point I was trying to make is that	10:50:56	10	Q. And the 30 is pharmacies; right?	10:54:04
11	having started from a -- having started with a	10:51:01	11	A. Correct.	10:54:07
12	thin sample, as I've used that term, with	10:51:05	12	Q. He maintained 30 pharmacies throughout	10:54:08
13	inherent limitations with respect to data	10:51:11	13	the analysis; is that right?	10:54:10
14	problems and representativeness of his sample as	10:51:16	14	A. As far as I know.	10:54:12
15	characterized by Dr. Rausser, he then made a	10:51:20	15	Q. But he limited the universe, in your	10:54:14
16	further adjustment to reduce the size of his	10:51:30	16	view, to nine third-party payers; is that right?	10:54:15
17	sample to those payers that purchased the most	10:51:33	17	A. That's the way it appeared to me to be,	10:54:19
18	Nexium, that's his language, and so what that	10:51:36	18	yes.	10:54:21
19	does is it modifies the sample characteristics in	10:51:42	19	Q. If I could have you take a look at	10:54:22
20	that it eliminates payers who did not purchase	10:51:50	20	Exhibit 2, which is Dr. Rausser's declaration,	10:54:25
21	the most Nexium.	10:51:54	21	please.	10:54:27
22	Q. And if you look at footnote 37 which	10:52:02	22	A. I have it.	10:54:27
23	comes off of the sentence we were just	10:52:05	23	Q. Pages 26 and 27 and in particular	10:54:30
24	discussing, you say "For example, it could be the	10:52:07	24	figures 11 and 12.	10:54:37

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<p>1 Q. I missed one between 169 and 135. 15:18:31</p> <p>2 A. 158, which I had identified previously, 15:18:38</p> <p>3 and 157. 15:18:40</p> <p>4 Q. And for 158 and 161 you said they might 15:18:57</p> <p>5 include reasonable royalty analysis, but you are 15:19:02</p> <p>6 not sure; is that right? 15:19:03</p> <p>7 A. I'm not certain. I think they did, but 15:19:06</p> <p>8 I'm not certain. 15:19:09</p> <p>9 Q. And 158 is Pharmacia Corp. versus Par 15:19:09</p> <p>10 Pharmaceutical and there you represented Par; is 15:19:17</p> <p>11 that right? 15:19:17</p> <p>12 A. Correct. 15:19:19</p> <p>13 Q. Do you recall what the product was 15:19:20</p> <p>14 there? 15:19:21</p> <p>15 A. I don't. 15:19:21</p> <p>16 Q. Do you recall the nature of your 15:19:30</p> <p>17 reasonable royalty analysis? 15:19:32</p> <p>18 A. I don't. 15:19:33</p> <p>19 Q. And then in 161, Tristrata Technology 15:19:37</p> <p>20 versus ICN Pharmaceuticals, you represented ICN 15:19:41</p> <p>21 there; is that correct? 15:19:44</p> <p>22 A. Correct. 15:19:46</p> <p>23 Q. Do you recall the product there? 15:19:46</p> <p>24 A. No. 15:19:47</p>	<p>1 C E R T I F I C A T E</p> <p>2 STATE OF NEW YORK)</p> <p>3 : ss.</p> <p>4 COUNTY OF NEW YORK)</p> <p>5</p> <p>6 I, CARY N. BIGELOW, Court Reporter,</p> <p>7 a Notary Public within and for the State of</p> <p>8 New York, do hereby certify:</p> <p>9 That ROY WEINSTEIN, the witness whose</p> <p>10 testimony is hereinbefore set forth, was</p> <p>11 duly sworn by me and that such testimony</p> <p>12 given by the witness was taken down</p> <p>13 stenographically by me and then</p> <p>14 transcribed.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this</p> <p>17 action by blood or marriage, and that I am</p> <p>18 in no way interested in the outcome of this</p> <p>19 matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto</p> <p>21 set my hand this 20th day of August, 2013.</p> <p>22</p> <p>23 _____</p> <p>24 CARY N. BIGELOW</p>
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<p>1 Q. And do you recall the nature of your 15:19:49</p> <p>2 reasonable royalty analysis? 15:19:51</p> <p>3 A. I don't. 15:19:52</p> <p>4 Q. Besides the opinions that are reflected 15:20:12</p> <p>5 in your report in this case and the things that 15:20:16</p> <p>6 we've talked about here in the deposition today 15:20:20</p> <p>7 have you formed any other opinions related to 15:20:24</p> <p>8 this case that you intend to present at the trial 15:20:26</p> <p>9 in this matter? 15:20:28</p> <p>10 A. No. 15:20:30</p> <p>11 MR. ANDERSON: I think that's all I 15:20:34</p> <p>12 have. 15:20:36</p> <p>13 MS. KINBURN: Nothing from me. 15:20:36</p> <p>14 THE VIDEOGRAPHER: This is the end of 15:20:38</p> <p>15 today's deposition. The time is 3:20. We 15:20:39</p> <p>16 are off the record. 15:20:42</p> <p>17 (Time noted: 3:20 p.m.) 15:20:44</p> <p>18 _____</p> <p>19 ROY WEINSTEIN</p> <p>20</p> <p>21 Subscribed and sworn to before me</p> <p>22 this ____ day of _____, 2013.</p> <p>23</p> <p>24 _____</p>	<p>1 ----- I N D E X -----</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 ROY WEINSTEIN MR. ANDERSON 5</p> <p>4</p> <p>5 ----- EXHIBITS -----</p> <p>6 Weinstein Exhibit 1, rebuttal expert 12</p> <p>7 report of Roy Weinstein</p> <p>8 Weinstein Exhibit 2, declaration of 12</p> <p>9 Gordon Rausser Ph.D.</p> <p>10 Weinstein Exhibit 3, declaration of 13</p> <p>11 Robert P. Navarro, Pharm.D.</p> <p>12 Weinstein Exhibit 4, expert report of 13</p> <p>13 Dr. Christine S. Meyer, Ph.D.</p> <p>14 Weinstein Exhibit 5, documents bearing 33</p> <p>15 production Nos. AZD 187346 through AZD</p> <p>16 187372</p> <p>17 Weinstein Exhibit 6, documents bearing 34</p> <p>18 production Nos. AZD 186728 through AZD</p> <p>19 186780</p> <p>20 Weinstein Exhibit 7, documents bearing 59</p> <p>21 production Nos. AZD 199328 through AZD</p> <p>22 199358</p> <p>23 Weinstein Exhibit 8, two-page article 69</p> <p>24 entitled "How Mail-Order Pharmacy</p>

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